UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,383	07/24/2003	James L. Kroening	P1905US00	9803

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EXAMINER
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ART UNIT	PAPER NUMBER
2188	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _03 May 2007_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-21_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-8,10-19 and 21_ is/are rejected.

7)☐ Claim(s) _9 and 20_ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _24 July 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 30,

2007 has been entered.

Response to Amendment

2.   This Office Action is in response to the Applicant's communication filed on May

03, 2007 in response to PTO Office Action mailed March 21, 2007. The Applicant's

remarks and amendments to the claims and/or the specification were considered with

the results that follow.

3.   In response to the last Office Action, claims 1, 7-13, 17 and 21 have been

amended. No claims have been added. Claim 22 has been canceled. As a result, claims

1-21 remain pending in this application.

Response to Arguments

4.   Applicant's arguments with respect to claims 1-21 have been fully considered but

they are moot in view of new ground(s) of rejections.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   <u>Claims 1-6, 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being</u>

<u>unpatentable over Maffezzoni (US 6,901,493) and Ding (US 6,430,663) (incorporated</u>

<u>reference by Maffezzoni, col. 6, lines 15-16).</u>

As per claim 1, Maffezzoni teaches a method of creating a backup copy of data

comprising:

copying contents of a first area of a first storage device to a second area of the

first storage device (Maffezzoni, col. 4, lines 43-50, col. 8, lines 15-16). Maffezzoni

teaches backing up data from one partition (user) of hard disk to anther partition (hidden

or protected area) of hard disk but fails to teach copying content of protected area to

user area, however it is readily apparent to one of ordinary skill in the art at the time of

the invention that originally the Operating System and data are stored in first area

(partition) of the disk and the backup copy is made to second partition of the disk, such

that in case of logical crash of one of the partition, the system remains operational from

the other partition of the disk (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col.

2, line 40). Thus, it would have been obvious to one having ordinary skill in the art to

make a backup copy of protected area of disk to user area of disk (i.e. make two copies

as taught by Maffezzoni) to keep the system operational from the same hard drive in

case of logical crash of the one of the partition (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40).

Maffezzoni further teaches saving user area to a second storage device (Maffezzoni, col. 8, lines 15-18). Maffezzoni fails to teach copying both protected area and user area to another disk, but he teaches that if there is a physical crash of the hard disk then data can not be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device so that data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

As per claim 2, Maffezzoni teaches the backup program performing copying function (Maffezzoni, col. 4, lines 51-54). Maffezzoni fails to teach downloading the utility as required by the claim, but downloading utility software via a network or internet is known in the art and Examiner takes official notice of the fact, because keeping software centrally at one place and then distributing or downloading to client computers makes upgrading and maintenance of the software more efficient and reliable.

As per claims 3 and 4, Maffezzoni teaches that the user area of the storage devices are saved to the second storage devices directly connected to electronic device or indirectly connected, e.g. attached to the backup server (Maffezzoni, col. 5, lines 11-35).

As per claim 5, Maffezzoni teaches booting to protected area (Maffezzoni, col. 5, lines 48-50).

As per claim 6, Maffezzoni teaches rebooting to user area after the copying and before the saving (Maffezzoni, col. 8, lines 6-9).

Claims 17 and 21 are rejected under same rationale as applied to combination of claims 1 and 2 above.

Claim 18 and 19 are rejected under same rationale as per claims 4-6 above.

7.   Claims 7-8 and 10-12 are rejected under **35 U.S.C. 103(a)** as being unpatentable over Applicant's Admitted Prior Art (APA herein after) and further in view of Kawano et al. (US 2003/0229768) (Kawano herein after).

As per claim 7, APA teaches saved contents can be restored to the electronic device (e.g. data can be restored from back up storage (first storage) to the storage connected to the device (second storage) (page 2, lines 27-28) and also as per APA operating system is unable to access the HPA, it inherently teaches restoring the data in user space of the second (attached to device) storage).

APA fails to teach copying protected area directory (data) from the user space of second storage to protected area of the second storage. Kawano teaches the data in the user area is copied to protected area (paragraph [0039]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the restoring method of APA by the teachings of Kawano so that the data can be protected from viruses and system can be recovered without using removable disks or storage devices (Kawano, paragraph [0008]).

As per claim 8, APA inherently teaches saving of data from second (attached to the electronic device) storage to the first storage (attached to the back up server) before restoring. Because one having ordinary skill in the art at the time of invention would knew that data can be restored from back up storage device if data was backed up from second storage to first storage (back up storage) initially.

As per claim 10, Kawano teaches booting to protected area and administering user data (par. [0033]).

As per claim 11, Kawano teaches rebooting to user area after user data is restored from PARTIES partition (par. [0043]).

As per claim 12, Kawano teaches storing software modules on different storage devices or on network system (par. [0030]). It would have been obvious to one having ordinary skill in the art at the time of the invention to downloaded software from different storage device (network) to be executed by computer system to achieve the functionality of Kawano.

8.   Claims 13-16 are rejected under **35 U.S.C. 103(a)** as being unpatentable over Kawano et al. (US 2003/0229768) (Kawano herein after) and Maffezzoni (US 6,901,493).

As per claim 13, Kawano teaches an electronic device (fig. 1, par. [0031], taught as computer system) comprising:

a processor (inherent in computer system); an a storage device (fig, 1, item 11),

wherein the storage device comprises instructions, which when executed on the

processor (par. [0029] and [0030]) comprise:

booting to the protected area and copying contents of the protected area to a

user area of the storage device (par. [0042], taught as BIOS boots the special operating

system from PARTIES partition and par. [0016], user data is passed between

partitions).

Kawano fails to teach, determining whether the storage device includes a

protected area and saving user area to a backup storage device. Maffezzoni teaches

copying data to multiple areas (partitions) of the hard disk such that if one of the multiple

partitions is damaged, the system remains operational from other partition of the same

hard disk and Maffezzoni also teaches backing up data to another storage device,

because in case of physical damage to entire disk, data is restored from second storage

device (Maffezzoni, col. 3, lines 13-22, col. 8, lines 12-27). It would have been obvious

to one having ordinary skill in the art at the time of invention to back up the

user/protected area data to second storage device as taught by Maffezzoni in the

system of Kawano, because data can be retrieved in case of physical damage to the

first storage device (Maffezzoni, col. 8, lines 12-27).

It is well known that some storage device contains a protected area (present

application specification page 2, lines 30-31). It would have been obvious to one having

ordinary skill in the art at the time of the invention would have implemented a process to

check whether the storage device includes a protected area before trying to boot from

PARTIES partition because all storage devices do not include protected area (present

application specification, page 2, lines 30-31, checking whether a protected area is

present on a storage device is known in the art as taught by Stevens. See abstract).

As per claim 14, Kawano teaches rebooting to user area after user data is

restored from PARTIES partition (par. [0043]).

As per claim 15, Maffezzoni teaches backup storage device (Maffezzoni, col. 5,

lines 11-35).

As per claim 16, Kawano teaches storing software modules on different storage

devices or on network system (par. [0030]). It would have been obvious to one having

ordinary skill in the art at the time of the invention to downloaded software from different

storage device (network) to be executed by computer system to achieve the

functionality of Kawano.

Allowable Subject Matter

9.   Claims 9 and 20 are objected to as being dependent upon a rejected base claim,

but would be allowable if rewritten in independent form including all of the limitations of

the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject

matter:

As per dependent claims 9 and 20, Maffezzoni, Ding or Kawano fail to teach

creating the protected area (claim 9) as well as create utility (claim 20) on the storage

device attached to the electronic device before backing up the data from the back up

storage device.

Any comments considered necessary by applicant must be submitted no later

than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on

Statement of Reasons for Allowance."

Conclusion

10.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Hu et al. (US 7,111,203) teaches method for implementing backup and recovery

using protected area of hard disk.

11.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kaushikkumar Patel whose telephone number is 571-

272-5536. The examiner can normally be reached on 8.00 am - 4.30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Hyung Sough can be reached on 571-272-6799. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.
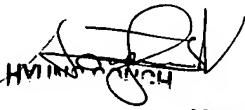
Information regarding the status of an application may be obtained from the

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published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Kaushikkumar Patel
Examiner
Art Unit 2188

kmp

SUPER   MINER
8/10/07